

Date: September 3, 2013

To: Thomas J. Bonfield, City Manager
Through: W. Bowman Ferguson, Deputy City Manager
From: Marvin G. Williams, Director of Public Works
Subject: Agenda Item – Mini Assessment Roll for Sewer Main on East Cornwallis Road

Executive Summary

The City Council, at its meeting on November 5, 2012, held a public hearing regarding the assessment of a sewer main on East Cornwallis Road. The assessment roll and subsequent mini roll have been confirmed, with the exception of the property of U.D.I. Community Development Corp. Mr. Ed Stewart spoke on behalf of U.D.I. at the August 19th Council meeting objecting to the assessment, and the item was referred back to the administration to provide more information. The requested additional information has been attached and summarized in this memorandum. Council action is required to confirm or relieve the said assessment.

Recommendation

Based on a review of the assessment relief policy established by City Council in 1979, the Public Works Department has determined that the policy is inadequate to address the issue of benefit to 4601 Industry Lane for the new sewer main, as the property had preexisting access to the sanitary sewer located on the property. The Public Works Department therefore recommends that the existing 1979 relief policy be amended to allow relief until tap on for properties that have preexisting access to the utility being assessed (water, sewer, or water and sewer). The Public Works Department further recommends that City Council conduct a public hearing, receive public comments, reconsider the assessment, find that the property has not benefitted from the sewer main at this time and grant relief of the assessment with a provision that a sewer frontage fee will be due and payable at the prevailing rate should the property connect to City sewer in accordance with Section 70-17 of the City Code of Ordinances and the revised assessment relief policy.

Background

After confirmation of the initial assessment roll on November 5, 2012, U.D.I. Community Development Corp. objected to the assessment against its property, described as 4601 Industry Lane, PIN 0729-02-97-7530. The assessment amount is \$13,990.00 and is for a sewer main that was installed in East Cornwallis Road under the City's Enabling Act Authority in response to a letter from the Durham County Health Department recommending that municipal sewer be extended to serve a property with a non-repairable septic system.

There were three primary reasons cited by U.D.I for the objection to the assessment.

- 1) U.D.I states that they had never received any notification of the proposed improvement when it was first ordered in 2010.

Staff Response:

City records indicate that notification of the public hearing to consider ordering the improvement was mailed to U.D.I at their address of record (P.O. Box 1349, Durham NC 27707) on October 23, 2010. A subsequent letter was mailed to the same address on November 23, 2010 indicating that the project had been ordered. Although Mr. Ed Stewart, President of U.D.I., states that they no longer receive mail at this box, neither letter was returned to the City as undeliverable. When Public Works sends notification

letters to property owners, addresses used are those on record with the Durham County Land Records Office as well as the Durham County Tax Administration Office. Records at these locations continue to list the current mailing address as the above mentioned post office box.

- 2) Mr. Stewart had understood that the “land swap” that was undertaken to remove one dedicated sewer easement on the U.D.I property for another (see map attachments #2 and #3) came with the understanding that there would be no cost to U.D.I.

Staff Response:

While it is true that there was no cost related to the easement location changes, this issue had nothing to do with the proposed assessment. This was a separate real estate transaction, and while it was a necessary part of the sewer extension, it was never implied that the swap would relieve the property from the assessment for construction. Regardless of whether the original easement remained and was utilized instead of the current easement, U.D.I. would still have been subject to assessment. Relocating the easement served two purposes:

- a. It allowed for more properties to be served with sewer.
- b. The relocated easement is on the rear of the property and is located almost entirely in the flood zone (see map attachment #4) and thus has less impact on the potential buildable area of the property than the original easement.

3. Mr. Stewart argues that the property does not benefit from the new sewer, since it already had access to sewer along the perimeter of the subject property.

Staff Response:

The question of whether this property actually benefitted from the addition of this sewer main is a subjective judgment, as this property had access to sewer via an outfall running through the property prior to the addition of the street main. It has been the practice of the City to assess Council-ordered street mains at the time of installation, after allowing property owners an opportunity to object to the assessment, and that is what has occurred in this case. However, after a review of the assessment relief policy established by City Council in 1979, the Public Works Department has determined that the policy is inadequate to address the issue of benefit to properties for the new utilities when the property had preexisting access to the utilities located on the property. Staff is recommending that the assessment relief policy be revised to allow for Council to grant relief of an assessment when the property had preexisting access to the utility being assessed, with a provision that a frontage fee will be due and payable at the prevailing rate in accordance with Section 70-17 of the City Code of Ordinances should the property connect to the City utility, regardless of the point of connection. That is to say that the frontage fee will be due for all frontage of the property on abutting streets which has not been previously assessed or paid for by the property owner regardless of whether the property connects to the preexisting utility or to the City-installed utility for which the assessment was granted relief until connection.

In addition to Mr. Stewart’s objections, the question arose during Council discussion as to whether this property qualified for relief due to its size.

Staff Response:

The current 1979 Council approved relief criteria only allows for large sub-dividable tracts that are zoned residential to be eligible for relief until tap on. This property is zoned O/I and therefore does not qualify for relief under current Council approved criteria.

Issues and Analysis:

Chapter VI, Article 7, Sec. 77 (17) of the City Charter states that City Council shall hear objections and either confirm, cancel, increase or reduce assessments “...according to the special benefits which the Council decides each of the lots or parcels has received or will

receive on account of such improvement...” In order to address the most common circumstances for which assessment relief is requested by property owners and to grant relief in a consistent manner, City Council established an assessment relief policy in 1979. All staff recommendations regarding assessment relief are based on this policy, though it should be noted that this policy was established to address objections that were primarily for residential property, rather than commercial. The policy was never intended to cover all situations or to limit City Council in its ability to take action regarding assessment objections. Based on a review of the assessment relief policy, the Public Works Department has determined that the policy is inadequate to address the issue of benefit to properties that have preexisting access to the utility being assessed. The Public Works Department is therefore recommending that the existing 1979 relief policy be amended to allow relief until tap on for properties meeting these criteria when relief is requested by the property owner.

There are two actions that Council could reasonably take on this particular assessment. The first option would be to confirm the assessment in the original amount in accordance with the existing policy for granting assessment relief. In order to recoup a portion of the construction costs, it has been the practice of the City to assess for street sewer mains upon their completion, unless a frontage fee has been previously paid. Payment of frontage fees is a prerequisite for connection per City Code Section 70-17. Since this property is undeveloped, no connection has been made to the existing sewer outfall and therefore no frontage fees have been paid.

Council's second option would be to recognize that this property has had access to sewer for many years via the outfall line that bisects it. As a result, the issue of whether the addition of the street main has benefitted the property is subjective. Per Chapter VI, Article 7, Sec. 77 (17) of the City Charter, Council does have the alternative of finding that the property has not benefitted at this time and grant relief from the assessment with the understanding that a future frontage charge would be due at the time of application for connection. Council could amend the assessment relief policy by establishing preexisting access to a utility as criteria for relief of the assessment to be granted with a provision that a frontage charge would be due and payable at the prevailing rate at the time of connection to the utility.

While the City charter allows Council to reduce or increase the assessment in response to the objection, neither of those options is recommended in this case as there is no justification for this property to be assessed at a rate higher or lower than the rate in effect at the time the improvement was ordered.

Alternatives:

The assessment was confirmed at the City Council meeting on November 5, 2012. In reconsidering the assessment in response to the objection, City Council has the following alternatives based on the City Charter as cited above:

- 1) City Council could find that the property has benefitted from the sewer main improvement and confirm the assessment in the original amount. This alternative could be considered by Council as past practices have called for a property to be assessed once a sewer main has been added that abuts the property.
- 2) City Council could revise the existing assessment relief policy as recommended and find that the property has not benefitted from the sewer main improvement at this time and grant relief of the assessment, with the provision that a sewer frontage charge will be due and payable at the prevailing rate (in accordance with City Code of Ordinances Section 70-17) should the property connect to City sewer. This alternative should be considered by Council, as the benefit to the property is a subject judgment.

- 3) City Council could find that the property has benefitted from the sewer main improvement in some amount more than the assessed amount and confirm the assessment in that increased amount. This is not recommended.
- 4) City Council could find that the property has benefitted from the sewer main improvement in some amount less than the assessed amount and confirm the assessment in that reduced amount. This is not recommended.

Financial Impacts:

The financial impact is dependent upon the action taken by Council. Granting relief until tap on of this sewer main assessment will result in a decrease of immediate potential revenue. However, should the property connect to the sewer main at some future date, a sewer frontage fee would be due at the prevailing rate which is likely to be higher than the assessment rate.

SBDE Summary:

The SBDE Summary is not applicable to this item.